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WRITTEN TESTIMONY OF STEVEN W. FITSCHEN CONCERNING SENATE BILL 439, GROUNDS FOR IMPEACHMENT OF JUSTICES OF THE SUPREME COURT AND CERTAIN JUDGES OF THE DISTRICT COURT, SUBMITTED TO THE SENATE JUDICIARY COMMITTEE ON MARCH 3, 2016

Mr. Chairman and members of the Committee, I am pleased to submit this testimony to you regarding Senate Bill 439, Grounds for Impeachment of Justices of the Supreme Court and Certain Judges of the District Court. By way of introduction, I am Steven W. Fitschen, President of the National Legal Foundation, and formerly Research Professor of Law at Regent University School of Law. The National Legal Foundation (NLF) is a public interest law firm that litigates in state and federal courts across the country. Most significantly, the NLF has won multiple cases at the Supreme Court of the United States and the Supreme Court of Alabama.[1]

Since even before my time as Research Professor of Law, one of my areas of expertise has been impeachment. One of my articles, *Impeaching Federal Judges: A Covenantal and Constitutional Response to Judicial Tyranny*, 10 Regent University Law Review 111 (1998), was cited 25 times by former Attorney General of the United States, Griffin Bell, in his President Clinton Impeachment Hearing testimony. The article was cited again in testimony before a subcommittee of the United States Senate's Judiciary Committee in 2015. This same article has been included in bibliographies compiled by the Library of Congress, the Brennan Center for Justice, Cornell University Law School's Legal Information Institute, and the University of South California School of Law. Furthermore, at the request of the staff of the Judiciary Committee of the United States House of Representatives the NLF prepared a Background Briefing entitled *Procedural History of Federal Impeachment Resolutions, Inquiries, and Trials*, in which we examined the then-90 such matters. We also prepared a second Background Briefing for the Chairman of the Rules Committee entitled *The Use of Select Committees in Impeachment Proceedings* in which we examined the 25 uses of such committees. Finally, I have testified on impeachment standards before the Colorado House Judiciary Committee.

In this testimony presented to this committee, I will draw heavily upon my article *Impeaching Federal Judges*, the two Background Briefings, and appropriate updates.[2]

[1] These cases include *Lefemine v. Wideman*, 133 Sp. Ct. 9 (2012) (*per curiam*); *Ex parte State ex rel. James*, 711 So. 2d 952 (Ala. 1998); *Equality Foundation of Greater Cincinnati, Inc. v. City of Cincinnati*, , *cert. denied*, 525 U.S. 943 (1998) (preserving NLF's lower court victory); *Board of Educ. of Westside Community Schools v. Mergens*, 496 U.S. 226 (1990).

[2] The full text of the law review article can be found at the citation already given and both of the Background Briefings can be found on the National Legal Foundation's web site, www.nlf.net. Therefore, I will dispense with footnotes documenting the data presented there. Any discrepancies between the data found in the materials just mentioned and today's testimony is

First, I would like to set some context. At the federal level, impeachment resolutions are not rare. They have been introduced against one Senator, and approximately 211 judges and 75 members of the executive branch.[3] Turning our attention specifically to judges, these resolutions have led to the investigation of at least 65 judges. Furthermore, of the nineteen individuals who have been impeached, fifteen have been judges, as have been all eight who have been convicted and two of the three who resigned before trial.

Section 28 of article II of the Kansas Constitution states that "[t]he governor and all other officers under this constitution, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors." Thus, the grounds for impeachment under the Kansas Constitution are identical to the grounds for impeachment under the United States constitution. Therefore, I will provide summary data on all federal impeachments, since—as will be shown below—the Kansas Senate has looked previously to federal precedent.

TABLE 1—IMPEACHED OFFICIALS

NAME	YEAR	OFFICE	CHARGE(S)	RESULT
William Blount	1797	Senator (Tenn.)	5 articles: conspiring with British and Indian forces against the Spanish	In a separate proceeding, the Senate expelled Blount the day after the House impeached him. His lawyers argued both that Senators were not subject to impeachment and that he could not be impeached since he no longer held office. The impeachment was dismissed
John Pickering	1803	U.S. Dist. Ct. Judge for Dist. of NH	4 articles: issuing an order which violated an act of Congress; refusal to hear witnesses in a case; refusal to allow an appeal of a case; and drunkenness and blasphemy	convicted and removed from office

due to updating the data for today's testimony. I have also consulted Elizabeth B. Bazan & Anna C. Henning, Congressional Research Service, *Impeachment: An Overview of constitutional Provisions, Procedure, and Practice* (2010). I will however, cite to sources not included in those documents, especially for matters dealing with Kansas impeachments.

[3] The statistics in this paragraph are based on the sources cited above plus a tentative update as of the time of this writing.

NAME	YEAR	OFFICE	CHARGE(S)	RESULT
Samuel Chase	1804	Assoc. Justice of the U.S. S. Ct.	8 articles: "highly arbitrary, oppressive, and unjust" treatment of attorneys, witnesses, grand juries and juries; violating the Sixth Amendment fair trial rights of defendants	Acquitted
James H. Peck	1830	U. S. Dist. Judge for Dist. of Mo.	1 article: holding an attorney in contempt of court "arbitrarily, oppressively, and unjustly"	Acquitted
West H. Humphreys	1862	U.S. Dist. Judge for E., M., & W. Dist. of Tenn.	7 articles: supporting the secession movement and acting as a Confederate judge	Acquitted on one sub-part; convicted on all other articles and sub-parts; removed from office and disqualified from further office holding
Andrew Johnson	1868	President	11 articles: removing and replacing the Secretary of War	Acquitted on 3 articles; Senate then adjourned *sine die*
Mark W. Delahay	1873	U.S. Dist. Judge for the Dist. of Kan.	no articles ever drafted; the investigating committee reported "personal habits [that] unfitted him for the judicial office," questionable financial dealings, and drunkenness	Delahay resigned after being impeached and before articles could be drafted; the House took no further action
William W. Belknap	1876	Secretary of War	5 articles: bribery	Belknap resigned and the Senate acquitted on that ground
Charles Swayne	1904	U. S. Dist. Judge for N. Dist. of Fla.	12 articles: falsifying expense accounts, unauthorized use of a railroad car in the possession of a receiver he had appointed; not residing in his district; and "unlawfully" holding attorneys in contempt	acquitted

NAME	YEAR	OFFICE	CHARGE(S)	RESULT
Robert W. Archbald	1912	U.S. Commerce Ct. (Circuit) Judge	13 articles: influence peddling with litigants before him while a district and circuit judge	acquitted on 8 articles (all but one relating to conduct while a District Judge, an office he no longer held); convicted on 5 articles; removed from office and disqualified from further office holding
George W. English	1926	U.S. Dist. Judge for E. Dist. of Ill.	5 articles: disbarring lawyers; summoning state officials and members of the press to court to threaten them with jail or removal from office; threat-ening jurors; favoritism in appointing bankruptcy referees; allowing referees to also serve as attorneys in their cases; personally benefiting from collusion with referees; and use of profanity	English resigned before Senate trial began; the House requested the Senate to terminate the proceedings; the Senate complied
Harold Louderback	1933	U.S. Dist. Judge for N. Dist. of Cal.	5 articles (the 5th article was amended prior to the start of the trial): setting up a false residence in anticipation of a divorce action by his wife; and impropriety relating to bankruptcy receiver	Acquitted

NAME	YEAR	OFFICE	CHARGE(S)	RESULT
Halsted L. Ritter	1936	U.S. Dist. Judge for S. Dist. of Fla.	Originally 4 articles; amended to 7 articles: corruption in a receivership case; practicing law while serving as a federal judge; and income tax evasion	Acquitted on first six articles which contained specific allegations; convicted on seventh article which merely recapitulated the prior six articles; removed from office; sued in Court of Claims for salary on the basis that articles did not meet constitutional standards for impeachment and that Senate could not justifiably acquit on the first six articles and convict on the seventh; court ruled courts have no authority to review impeachments
Harry E. Claiborne	1986	U.S. Dist. Judge for Dist. of Nev.	4 articles: the judge had been convicted of income tax evasion but as a convicted felon he refused to resign	Acquitted on one article; convicted on three articles; removed from office
Alcee L. Hastings	1988	U.S. Dist. Judge for S. Dist. of Fla.	17 articles: taking a bribe; lying and submitting false evidence in his criminal trial; and revealing wiretap information	Acquitted on 3 articles; convicted on 8 articles; the Senate declined to vote on 6 articles; removed from office
Walter L. Nixon, Jr.	1989	U.S. Dist. Judge for S. Dist. of Miss.	3 articles: perjury before a grand jury (for which he had been convicted in a criminal trial)	Acquitted on 1 article; convicted on two articles; removed from office; sued to overturn conviction; Supreme Court ruled verdict unreviewable
William Jefferson Clinton	1999	President	2 articles: perjury and obstruction of justice	Acquitted
Samuel B. Kent	2009	U.S. Dist. Judge for S. Dist. of	4 articles: sexual assault; lying to Congress and the	Kent resigned before Senate trial began; the

NAME	YEAR	OFFICE	CHARGE(S)	RESULT
		Tex.	FBI	House requested the Senate to terminate the proceedings; the Senate complied
G. Thomas Porteous, Jr.	2010	U.S. Dist. Judge for E. Dist. of La.	4 articles: Pattern of conduct: corrupt financial dealings, refusal to recuse, perjury during his personal bankruptcy, lying during confirmation hearings	Convicted on all articles; removed from office and disqualified from further office holding

As noted in the above table, Senator Blount, the first federal official to be impeached argued that Senators were not subject to impeachment, and the House has never again impeached a member of Congress. However, as the statistics demonstrate, the House has frequently impeached judges. The rationale behind both of these views comes from the inclusion of judges but the omission of members of Congress in the Constitution's Appointments Clause. Similarly, Theodosius Botkin, Judge of the 32nd Judicial District, was impeached by the Kansas House. *See, Daily Journal of the Senate, Trial of Theodosius Botkin, Judge of the 32d Judicial District, Before the Senate of the State of Kansas, on Impeachment by the House of Representatives for Misdemeanors in Office* (1891).

Botkin's impeachment is a good place to examine those matters that have previously constituted impeachable offenses in Kansas. In fact, it is much more helpful than the other Kansas impeachments since those involved unique circumstances: the politics of "bleeding Kansas" and a supposed "bond scandal" involving executive officials, not judges. *See, Proceedings in the Cases of the Impeachment of Charles Robinson, Governor, John W. Robinson, Secretary of State, George S. Hillyer, Auditor of State, of Kansas* (1862). Similarly, see *Trial of Will J. French, Auditor of the State of Kansas, Before the Senate of the State of Kansas, Sitting as a Court of Impeachment: On Articles of Impeachment Presented by the House of Representatives for Alleged Misdemeanors in Office* (1934).

In Botkin's case, various offenses were held to fall under the category of "misdemeanors" and "high misdemeanors." In ten articles of impeachment, the House accused Botkin of bringing his "high office" "into contempt, ridicule and disgrace" by drunkenness, cursing, "acting willfully, maliciously, oppressively, partially and illegally exercise[ing] the functions of his . . . judicial office of his own mere will," and of various acts of corruption in specific cases. *Trial of Theodosius Botkin* at 18-28. Perhaps most importantly, although Botkin was acquitted, many senators voted for conviction on many articles, and in the trial much of the history of English and American impeachment was cited to demonstrate that the type of charges filed against Botkin were in fact impeachable offenses. *See, e.g., Trial of Theodosius Botkin* at 76-164.

Thus, it is important to look to that history to evaluate Senate Bill 439. This history will demonstrate that each of the enumerated grounds for impeachment is well within the historic use of the phrase "treason, bribery, or other high crimes and misdemeanors."

One of the most intriguing aspects of the history of impeachment in America is that no judge has ever been impeached for some of the behaviors that citizens are the most concerned

about. As they are today, Americans have often been concerned about judicial activism, judicial tyranny, evolutionary jurisprudence, rendering unconstitutional opinions, and the like. And, as will be demonstrated below, the Framers intended these behaviors to be impeachable offenses.

However, there are several historical reasons why impeachment has never been attempted for these offenses. In 1803-1805, President Thomas Jefferson attempted to use impeachment as a political weapon against Federalist judges. Jefferson, and those pursuing impeachment in the House, properly understood that "high crimes and misdemeanors" was an elastic term, designed to encompass unindictable offenses. However, they abused the process by attempting to circumvent the limits the Framers intended for the term.

History is the best guide to understanding why the term "high crimes and misdemeanors" was chosen. History also demonstrates that Jefferson went beyond the Framers' intent when he sought to use impeachment to remove federal judges simply because they belonged to the opposing political party. Anyone who seeks to do the same today would be guilty of the same error. However, anyone who seeks to remove tyrannical judges would use the tool of impeachment exactly as intended by the Framers.

I will turn now to the history of the term "high crimes and misdemeanors." At the Constitutional Convention, George Mason suggested the term "mal-administration" as a needed grounds for impeachment because: "Treason as defined in the Constitution will not reach many great and dangerous offenses . . . . Attempts to subvert the Constitution may not be Treason as above defined." However, James Madison objected to the term because "so vague a term will be equivalent to a tenure during the pleasure of the Senate." The Convention instead adopted the phrase "high crimes and misdemeanors." Thus, the Framers also included a powerful check on judicial tyranny, while being careful to protect the independence of the judiciary.

The Framers chose the term "high crimes and misdemeanors" for this dual purpose because it was a phrase that already had a long 400-year history. The term is not derived from then-current criminal law but was coined in the context of the 1386 impeachment of the Earl of Suffolk. In fact, at that time there was no such crime as a misdemeanor. In those days, lesser crimes were prosecuted as "trespasses." The phrase "high crimes and misdemeanors" applied to political crimes, *i.e.*, crimes against the state whether indictable or not.

One point needs to be clarified. The Constitutional Convention substituted the phrase "high crimes and misdemeanors" for the "vague" term "maladministration." Yet Sir William Blackstone—whose views on this matter many scholars of impeachment consult—considered maladministration *to be* a high crime or misdemeanor. The answer to this seeming contradiction lies in the fact that Blackstone (and Mason) were describing a key political crime while Madison was warning about an abuse of the terminology used to name that crime. Blackstone's use of maladministration is clearly limited to crimes against the state and does not extend to removing one's personal enemies. For example, he wrote that public officials are subject to impeachment because they "may infringe the rights of the people, and be guilty of such crimes, as the ordinary magistrate either does not or cannot punish."

The Framers were well aware of the 400 years of English impeachment history. Richard Wooddeson, Blackstone's successor as Vinerian Lecturer, authored the first "methodical compilation" on the subject of English impeachment beginning in 1777. The work was "much cited in our country."

Wooddeson explicitly stated that impeachment is appropriate for misdeeds that would not be cognizable in the ordinary courts of law. In his discussion of what had historically constituted "high crimes and misdemeanors" and thus grounds for impeachment, he wrote that judges could

be impeached if they "mislead their sovereign by unconstitutional opinions." In his *Commentaries on the Constitution of the United States*, United States Supreme Court Justice Joseph Story paraphrased and summarized Wooddeson's work:

> In examining the parliamentary history of impeachments, it will be found that many offenses not easily definable by law, and many of a purely political character, have been deemed high crimes and misdemeanors worthy of this extraordinary remedy. Thus, lord chancellors and judges and other magistrates have not only been impeached for bribery, and acting grossly contrary to the duties of their office, but for misleading their sovereign by unconstitutional opinions and for attempts to subvert the fundamental laws, and introduce arbitrary power.

Mason (as noted above) was desirous that, because the traditional definition of treason had been narrowed by the Convention, some of the old grounds for treason be subsumed under "maladministration." In particular, Mason was concerned that efforts to subvert the Constitution might not constitute treason. To modern scholars it may seem strange that Mason had any question whatsoever about this matter. It appears—on the face of the document—that subverting the Constitution is outside the definition of treason adopted by the Convention. Perhaps the answer lies in the fact that Mason understood that, under the constitutional definition, treason includes "levying war." In the English impeachment of the Earl of Strafford (1642), subverting the fundamental laws and introducing arbitrary power were characterized as "high treason" because such actions were held to constitute "levying war" against the people and the King.

The early Supreme Court likely relied on the same logic when it declared that either usurping or abrogating authority constituted treason under the Constitution—despite the fact that, to modern thinking, these things do not fit the Constitutional definition. The Court stated, "We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution."

So, although subverting the Constitution very possibly was included as an impeachable offense under the treason provision, Mason wanted to "hedge his bets" and cover it in another provision, as well. The term "high crimes and misdemeanors" was eventually adopted to meet Mason's concerns. The term, therefore, subsumes the political crimes of subverting the fundamental laws and introducing arbitrary power.

The fact that Jefferson, as President, went too far does nothing to change the Framers' intention regarding the proper uses of impeachment. Clearly, the Framers intended to create an independent judiciary. Hamilton dedicated several numbers of the *Federalist* to this issue. However, it is equally true that Hamilton, in *Federalist No. 81*, wrote of

> the important constitutional check which the power of instituting impeachments . . . would give to [Congress] upon the judicial department. This is alone a complete security. There can never be danger that the judges, by a series of deliberate usurpations on the authority of the legislature, would hazard the united resentment of the body intrusted [sic] with it.

Jefferson and his allies sought to remove Federalist judges from the bench simply because they were political adversaries. The nation should be grateful that they failed. When

many of the Framers and early constitutional scholars stated that impeachments were political in nature, they did not mean that they were to be used as a political weapon against political enemies. Rather, they meant that they were to be used to punish "political crimes," which would often be outside the cognizance of the criminal statutes or which could be punished both by criminal prosecutions and with impeachment.

The Framers did not simply have knowledge of English impeachment history. They also explicitly adopted the same "ground rules" for America. Consider several of the following representative quotations. Alexander Hamilton, in *The Federalist Papers,* wrote:

> The subjects of its [impeachment's] jurisdiction are those offenses which proceed from the misconduct of public men, or, in other words from the abuse or violation of some public trust. They are of a nature which with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself.

Justice James Wilson, a signer of the Constitution and one of the five original Supreme Court Justices explained that "Impeachments are confined to political characters, to political crimes and misdemeanors, and to political punishments."

In multiple discussions in his *Commentaries,* Justice Joseph Story strongly attacked the idea that high crimes and misdemeanors could be limited to indictable offenses:

> The jurisdiction is to be exercised over *offences, which are committed by public men in violation of their public trust and duties*. Those duties are, in many cases, political; and, indeed, in other cases, to which the power of impeachment will probably be applied, they will respect functionaries of a high character, *where the remedy would otherwise be wholly inadequate*, and the grievance be incapable of redress. Strictly speaking, then, *the power partakes of a political character*, as it respects injuries to the society in its political character . . . .

The plain inference is that the remedy will be "wholly inadequate" because the offences are not indictable.

Furthermore, there are other passages in which Story speaks less euphemistically. For example, he also explained:

> The offences to which the power of impeachment has been and is ordinarily applied as a remedy are of a political character. Not but that crimes of a strictly legal character fall within the scope of power . . . but that it has a more enlarged operation, and reaches what are aptly termed political offenses, growing out of personal misconduct or gross neglect, or usurpation, or habitual disregard of the public interests, in the discharge of the duties of political office. These are so various in their character, and so indefinable in their actual involutions, that it is almost impossible to provide systematically for them by positive law. They must be examined upon very broad and comprehensive principles of public policy and duty.

Here Story was quite specific: impeachable offenses include both indictable crimes and unindictable political offences. Yet, he went on to make an even stronger statement, noting that no one in his day had asserted that impeachment could be confined to federal crimes:

> Again, there are many offences, purely political, which have been held to be within the reach of parliamentary impeachments, *not one of which is in the slightest manner alluded to in our statute book*. And, indeed, political offences are of so various and complex a character, so utterly incapable of being defined, or classified, that the task of positive legislation would be impracticable, if it were not almost absurd to attempt it. . . . [*N*]*o one has as yet been bold enough to assert that the power of impeachment is limited to offences positively defined in the statute book of the Union, as impeachable high crimes and misdemeanors.*

A final point is also well worth noting. None of the earliest impeachments involved an indictable crime.

> Congress have unhesitatingly adopted the conclusion that no previous statute is necessary to authorize an impeachment for any official misconduct; and the rules of proceeding, and the rules of evidence, as well as the principles of decision, have been uniformly regulated by the known doctrines of the common law and [English] parliamentary usage. *In the few cases of impeachment, which have hitherto been tried, no one of the charges has rested upon any statutable misdemeanors*.

We also recall that other passage from Story, cited earlier, wherein he recounts that

> [L]ord chancellors, and judges, and other magistrates, have not only been impeached for bribery, and acting grossly contrary to the duties of their office, but *for misleading their sovereign by unconstitutional opinions, and for attempts to subvert the fundamental laws, and introduce arbitrary power.*

These last examples are not indictable crimes. Yet they constitute political offenses which judges committed from the 1300s through the 1700s.

In summary, it is beyond dispute that the Framers intended impeachment to be used against political crimes whether indictable or not. It is also clear that "misleading their sovereign by unconstitutional opinions and for attempts to subvert the fundamental laws, and introduce arbitrary power" were "high crimes and misdemeanors" about which the Framers were particularly concerned with regard to the judicial branch.

Jefferson's attempted abuse of this tool led to its disfavor. Another possible contributing factor was that officials who had been impeached for unindictable offenses almost universally argued the opposite view—that only indictable offenses were impeachable—even though no impeached official has ever persuaded the Senate with this argument.

However, the fact that judges have been susceptible to these temptations of power for hundreds of years illustrates the wisdom of the Framers in providing for a safeguard against this propensity. Modern day advocates of judicial impeachment are not seeking to introduce some radical new threat to judicial independence. Rather, they are urging a return to the wisdom of the

Framers which has been lost through historical accident. Similarly, Senate Bill 439 is not a threat to judicial independence.

Finally, I note that various justices and scholars have specifically addressed rendering unconstitutional opinions as grounds for impeachment. First, After Supreme Court Justice Chase's impeachment, but prior to his acquittal, Chief Justice John Marshall wrote in a letter to Chase that:

> [T]he present doctrine seems to be that a Judge giving a legal opinion contrary to the opinion of the legislature is liable to impeachment. . . . I think the modern doctrine of impeachment should yield to an appellate jurisdiction in the legislature. A reversal of those legal opinions deemed unsound by the legislature would certainly better comport with the mildness of our character than [would] a removal of the Judge who has rendered them unknowing of his fault.

Clearly, no such change was ever made to the United States Constitution nor is such a provision present in the Colorado Constitution. Thus, the remedy for rendering unconstitutional opinions remains impeachment.

In *Rochin v. California*, 342 U.S. 165 (1952) United States Supreme Court Justice Felix Frankfurter clearly stated that even Supreme Court Justices who would not restrain themselves were subject to impeachment: "Restraints on our jurisdiction are self-imposed only in the sense that there is from our decisions no immediate appeal *short of impeachment* or constitutional amendment." Similarly, West Virginia Supreme Court Chief Justice Richard Neely wrote that when a supreme court renders unconstitutional opinions "there is absolutely no recourse from its decision except constitutional amendment or *impeachment of the court and appointment of a new court which will overrule the offending decision*." (Some might argue that these two quotations address only the problem of lack of recourse from the court of last resort. However, for reasons that will be explained below, it is clear that these jurists were *applying* the remedy of impeachment to supreme courts, not *limiting* the remedy to those courts.)

Finally, it is important to note the writings of Professor Raoul Berger, whose views were given great weight during both the Watergate and Clinton impeachment proceedings. Professor Berger has written, "When the judiciary substitutes its own value choices for those of the people it subverts the Constitution by usurpation of power." Berger pointed out that "both the English and the Founders regarded 'usurpation' or subversion of the Constitution as the most heinous of impeachable offenses." He also specifically addressed *Federalist No. 81*, commenting, "judicial usurpation, as Hamilton stated, can be met by impeachment."

Therefore, there can be no doubt that Kansas judges and justices can be impeached for any act of judicial tyranny, for judicial usurpation, for subverting the United States or Kansas constitutions, or for rendering an unconstitutional opinion. Furthermore, even if their "political offenses" do not fall neatly into any of these categories, they could still be impeached if the House believes that that is necessary to protect the people of Kansas. In particular, one thinks of Judge Ritter, from the table above, who was acquitted of six specific charges and then convicted under a last charge which merely recapitulated the others.

Furthermore, there is no need to rely upon the appeals process to produce a hoped-for result. To do so would be to send a signal that trial judges can engage in impeachable conduct with impunity, knowing that the only possible consequence is having their opinion reversed. Not all litigants can afford to pursue an appeal. Certainly, the United States Congress has never

adopted that view. That the actions of a lower court judges could be appealed have never immunized them from impeachment. Reviewing the table above, shows that only one impeached jurist was a Supreme Court Justice and that many of the impeachment offenses of lower court judges were subject to review by higher courts.

In conclusion, there is nothing in the text of the Kansas Constitution nor in the history of Judge Botkin's impeachment in Kansas or in the history of impeachment in the United States or in England that precludes any of the grounds listed in senate Bill 439. Instead, the enumerated grounds simply assist the House and this body in pursuing and trying appropriate impeachments.

To quote Justice Joseph Story one more time, I end by noting that that great jurist and scholar warned that the legislature's use of its impeachment power, must not become "so weak and torpid as to be capable of lulling offenders into a general security and indifference."

I thank you again for the opportunity of presenting this testimony.